



City of Commerce

Linda Kay Olivieri, MMC
City Clerk

July 22, 2005

Mrs. Violet Varona-Lukens, Executive Officer
Los Angeles County Board of Supervisors
Room 383 Kenneth Hahn Hall of Administration
500 W. Temple Street
Los Angeles, California 90012

Dear Mrs. Varona-Lukens:

Enclosed please find two certified copies of City of Commerce, California, Resolution No. 05-29, approved and adopted by the City Council on July 19, 2005, respectfully requesting the Board of Supervisors of the County of Los Angeles to consolidate a Special Municipal Election to be held in the City on Tuesday, November 8, 2005, with the Statewide Special and Consolidated Elections to be held on the same date.

Also enclosed for your files are two certified copies of Resolution No. 05-28, calling and giving notice of the Special Municipal Election to be held on Tuesday, November 8, 2005.

Please advise as to whether or not the City's request for consolidation will be accepted.

Thank you for your consideration of this matter and if I may be of any assistance to you, please do not hesitate to give me a call.

Sincerely,

Linda Kay Olivieri, MMC
City Clerk

Enc. (2)

cc: Mr. Sylvia Lira, Section Head
Election Coordination Section
Los Angeles County RR/CC

ELEC78B.DOC

2535 Commerce Way
Commerce, CA 90040
Phone: 323•722•4805
Fax: 323•726•6231
E-mail: lindao@ci.commerce.ca.us

"Where Quality Service Is Our Tradition"

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES
TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY,
NOVEMBER 8, 2005, WITH THE STATEWIDE SPECIAL ELECTION AND SCHOOL
ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO §10403 OF THE
ELECTIONS CODE

WHEREAS, the City Council of the City of Commerce, California, called a Special Municipal Election to be held on Tuesday, November 8, 2005, for the purpose of submitting to the qualified voters the question relating to an Ordinance enacting a hotel visitors tax; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the Statewide Special Election and School Election to be held on the same date and that within the City the precincts, polling places and election officers of the three elections be the same, and that the County Election Department of the County of Los Angeles canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide Special Election and School Election on Tuesday, November 8, 2005, for the purpose of submitting to the qualified voters the question relating to an Ordinance enacting a hotel visitors tax; and

SECTION 2. That a measure is to appear on the ballot as follows:

MEASURE A. SHALL THE ORDINANCE ENTITLED "AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX", FOR THE PURPOSE OF PROTECTING THE LOCAL ECONOMY BY CONTINUING TOURISM PROMOTION, BE APPROVED?	YES	
	NO	

SECTION 3. That the County Election Department is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

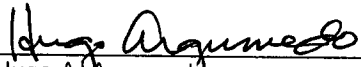
SECTION 4. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. That the City of Commerce, California, recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

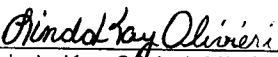
SECTION 6. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of Los Angeles.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED ON July 19,
2005.

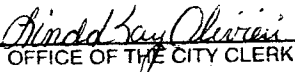

Hugo A. Argumedo
Mayor

ATTEST:


Linda Kay Olivieri, MMC
City Clerk

ELECRS25.DOC

THIS IS A CERTIFIED TRUE COPY OF
City of Commerce, California,
Resolution No. 05-29
THE ORIGINAL OF WHICH IS ON FILE
IN THE CITY CLERKS OFFICE.


OFFICE OF THE CITY CLERK
CITY CLERK 7/21/05

RESOLUTION NO. 05-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2005, WITH THE STATEWIDE SPECIAL ELECTION AND SCHOOL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO §10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Commerce, California, called a Special Municipal Election to be held on Tuesday, November 8, 2005, for the purpose of submitting to the qualified voters the question relating to an Ordinance enacting a hotel visitors tax; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the Statewide Special Election and School Election to be held on the same date and that within the City the precincts, polling places and election officers of the three elections be the same, and that the County Election Department of the County of Los Angeles canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide Special Election and School Election on Tuesday, November 8, 2005, for the purpose of submitting to the qualified voters the question relating to an Ordinance enacting a hotel visitors tax; and

SECTION 2. That a measure is to appear on the ballot as follows:

MEASURE A. SHALL THE ORDINANCE ENTITLED "AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX", FOR THE PURPOSE OF PROTECTING THE LOCAL ECONOMY BY CONTINUING TOURISM PROMOTION, BE APPROVED?	YES	
	NO	

SECTION 3. That the County Election Department is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

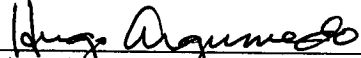
SECTION 4. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. That the City of Commerce, California, recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 6. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of Los Angeles.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED ON July 19,
2005.



Hugo A. Argumedo
Mayor

ATTEST:


Linda Kay Olivieri, MMC
City Clerk

ELECRS25.DOC

THIS IS A CERTIFIED TRUE COPY OF
City of Commerce, California,
Resolution No. 05-29
THE ORIGINAL OF WHICH IS ON FILE
IN THE CITY CLERKS OFFICE.


OFFICE OF THE CITY CLERK
CITY CLERK 7/21/05

RESOLUTION NO. 05-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL
ELECTION ON TUESDAY, NOVEMBER 8, 2005, FOR THE SUBMISSION TO THE
QUALIFIED VOTERS A PROPOSED ORDINANCE

WHEREAS, the City Council of the City of Commerce, California, desires to submit to the voters at a Special Municipal Election a proposed Ordinance relating to enacting a hotel visitor tax; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed Ordinance to the voters;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Commerce, California, on Tuesday, November 8, 2005, a Special Municipal Election for the purpose of submitting the following proposed Ordinance:

MEASURE A. SHALL THE ORDINANCE ENTITLED "AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX", FOR THE PURPOSE OF PROTECTING THE LOCAL ECONOMY BY CONTINUING TOURISM PROMOTION, BE APPROVED?	YES	
	NO	

SECTION 2. That the text of the Ordinance submitted to the voters is attached hereto as Exhibit A.

SECTION 3. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 4. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 5. That the polls for the election shall be open at seven o'clock a.m. (7:00 a.m.) of the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 p.m.) of the same day when the polls shall be closed, except as provided in §14401 of the Elections Code of the State of California.


SECTION 6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.


SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

RESOLUTION NO. 05-28
CALLING AND GIVING NOTICE OF
SPECIAL MUNICIPAL ELECTION –
SUBMISSION OF PROPOSED ORDINANCE
Page 2 of 2

PASSED, APPROVED AND ADOPTED ON July 19,
2005.



Hugo A. Argumedo
Mayor

ATTEST:


Linda Kay Olivier, MMC
City Clerk

ELECRS24.DOC

THIS IS A CERTIFIED TRUE COPY OF
City of Commerce, California,
Resolution No. 05-28,
THE ORIGINAL OF WHICH IS ON FILE
IN THE CITY CLERKS OFFICE.


OFFICE OF THE CITY CLERK
CITY CLERK 7/21/05

MEASURE A

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX

THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA DO ORDAIN AS FOLLOWS:

Section 1. The following new Chapter 3.10 is hereby added to the Commerce Municipal Code:

"CHAPTER 3.10

HOTEL VISITOR TAX

3.10.010 Short title. This chapter shall be known as the "Uniform Hotel Visitor Tax Ordinance of the City of Commerce".

3.10.020 Definitions. Except where the context requires, the definitions give in this section govern the construction of this chapter, as follows:

(a) "Guest", "transient" and/or "visitor" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a guest, transient and/or visitor until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a guest, transient and/or visitor, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(b) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by guests, transients and/or visitors for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, bed and breakfast, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, boarding house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

(c) "Occupancy" means the use or possession, or the right to use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

(d) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or other group or combination acting as a unit.

(f) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods,

ORDINANCE NO. _____
HOTEL VISITOR TAX

labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(g) "Tax administrator" means the Finance Director of the City or his or her designee.

3.10.030 Imposition – Amount – Where payable. For the privilege of occupancy in any hotel, each guest, transient and/or visitor is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent charged by the operator or at any lesser rate that the City Council shall determine by resolution. Said tax constitutes a debt owed by the guest, transient and/or visitor to the City which is extinguished only by payment to the operator or to the City. The guest, transient and/or visitor shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the guest, transient and/or visitor's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

3.10.040 Exemptions. No tax shall be imposed upon:

- (a) Any federal officer or employee when on official business;
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.10.050 Guest, transient and/or visitor occupancy registration certificate requirements. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to guests, transients and/or visitors shall register such hotel with the tax administrator and obtain from him or her a guest, transient and/or visitor occupancy registration certificate, which shall be referred to as the Visitor Occupancy Registration Certificate, to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued, and
- (d) The following statement:

"This Visitor Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Hotel Visitor Tax Ordinance of the City of Commerce by registering with the Tax Administrator for the purpose of collecting from guests, transients and/or visitors the hotel guest, transient and/or visitor tax and remitting such tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit. It is unlawful to operate a hotel in the City without a currently valid certificate."

3.10.060 Collection. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every guest, transient and/or visitor. If the operator collects the rent but fails to collect the tax imposed by this chapter, for any reason, the operator shall nevertheless be required to pay such tax to the City. The amount of tax shall be separately stated from the amount of the rent charged, and each guest, transient and/or visitor shall receive a receipt for payment from the

operator. A duplicate of this receipt shall be kept by the operator in accordance with Section 3.10.080. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

3.10.070 Reporting and remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for guest, transient and/or visitor occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted by the operator to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the tax administrator.

3.10.080 Recordkeeping. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the tax administrator shall have the right to inspect at all reasonable times.

3.10.090 Failure of operator to collect and report tax – Determination of tax by tax administrator – Notice and hearing. If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of business address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause, at a time and place fixed in the notice, why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable fifteen (15) days after the date of the tax administrator's written notice unless an appeal is taken as provided in Section 3.10.100.

3.10.100 Appeals. Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of the tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give five (5) days notice in writing thereof to such operator at his or her last known place of business address. The findings of the city council shall be final and conclusive, and shall be served upon the

appellant in the manner previously prescribed for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.10.110 Penalties and interest.

(a) Original delinquency. Any operator who fails to remit any portion of any tax imposed by this chapter, within the time required, shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

(c) Audit deficiency. If, upon audit by the City, an operator is found to be deficient in his or her return or his or her remittance, or both, the tax administrator shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the invoice, an additional penalty shall be imposed at the rate of one percent (1%) per day of the net deficiency, not to exceed ten percent (10%) of the total of the deficiency amount and penalties.

(d) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(e) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent (1½%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(f) Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

3.10.120 Duty of successor or operator. If an operator who is liable for any tax or penalties under this chapter sells or otherwise disposes of his or her hotel, his or her successor shall notify the tax administrator of the date of sale and withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty, for payment to City, until the selling operator produces a receipt from the tax administrator showing that the tax or penalty has been paid or a tax clearance certificate from the tax administrator stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the tax administrator pending settlement of the account of the seller.

3.10.130 Liability of successor for failure to withhold – Notice of amount due. If the successor to the hotel fails to withhold a portion of the purchase price as required, he or she shall also, along with the seller, be liable for the payment of the amount required to be withheld, and any penalty. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate, stating that no tax or penalty is due, the tax administrator shall either issue the certificate or mail notice to the successor at his or her address as it appears on the records of the tax administrator of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

3.10.140 Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City

under this chapter, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within six (6) months of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) An operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a guest, transient and/or visitor; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the guest, transient and/or visitor or credited to the rent subsequently payable by the guest, transient and/or visitor to the operator.

(c) A guest, transient and/or visitor may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the guest, transient and/or visitor directly to the tax administrator, or when the guest, transient and/or visitor, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the guest, transient and/or visitor has been unable to obtain a refund from the operator who collected the tax and that the operator has already paid the amount of the subject tax to the City.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

3.10.150 Action by City to collect tax. Any tax required to be paid by any guest, transient and/or visitor under the provisions of this chapter shall be deemed a debt owed by the guest, transient and/or visitor to the City and payable through the operator. Any such tax collected by an operator which has not been paid to the City shall be deemed tax funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this chapter. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. In such action, such person shall also be liable for the City's attorney fees and costs in such amount as shall be approved by the court.

3.10.160 Violations – Penalties. Any person violating any of the provisions of this chapter shall be guilty of an infraction.

3.10.170 Revocation of certificate. Whenever any operator fails to comply with any provision of this chapter or any rule or regulation of the tax administrator prescribed and adopted under this chapter, the tax administrator upon hearing, after giving the operator ten (10) days notice in writing, specifying the time and place of hearing and requiring him or her to show cause why his or her certificate should not be revoked, may suspend or revoke the certificate held by the operator. The tax administrator shall give the operator written notice of the suspension or revocation of his or her certificate. The notice required in this section may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The tax administrator shall not issue a new certificate after a revocation unless he or she is satisfied that the former holder of the certificate will comply with the provisions of this chapter and regulations of the tax administrator.

3.10.180 Closure of hotel without certificate. During any period of time during which a certificate has not been issued or is suspended, revoked or otherwise not validly in effect, the tax administrator may require that the hotel be closed.

3.10.190 Recording notice of lien. If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the tax administrator may, within three (3) years after the amount is due, file for record in the office of the county recorder a notice of lien specifying the amount of the tax, interest and penalties due, the name and address as it appears on the records of the tax administrator of the operator

liable for the same and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be remitted and paid. From the time of the filing for record, the amount required to be remitted, together with interest and penalties, constitutes a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by him or her. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the notice of lien unless sooner released or otherwise discharged.

3.10.200 Priority and lien of tax.

(a) The amounts required to be paid by any operator under this chapter with interest and penalties shall be satisfied first in any of the following cases:

- (1) Whenever the person is insolvent;
- (2) Whenever the person makes a voluntary assignment of his or her assets;
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process law. This chapter does not give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

(b) The preference given to the City by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 through 1208.5 of the Code of Civil Procedure.

3.10.210 Warrant for collection of tax. At any time within three (3) years after any operator is delinquent in the remittance or payment of any amount herein required to be remitted or paid or within three (3) years after the last recording of a notice of lien under Section 3.10.190, the tax administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner with the same effect as a levy of and a sale pursuant to a writ of execution. The tax administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper.

3.10.220 Seizure and sale. At any time within three (3) years after any operator is delinquent in the remittance or payment of any amount, the tax administrator may forthwith collect the amount in the following manner: The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due, together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect hotel guest, transient and/or visitor taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

3.10.230 Withhold notice. If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or her, or in the event a determination has been made against him or her for the remittance of tax and payment of the penalty, the City may, within three (3) years after the tax obligation became due, give notice thereof personally or by registered mail to all persons, including the state or any political subdivision thereof, having in their possession or under their control any credits or any personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the City consents to a transfer or disposition or until sixty (60) days elapse after the receipt of the notice, whichever expires earlier. All persons, upon receipt of said notice, shall advise the City immediately of all such credits, other

personal property or debts in their possession, under their control or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of the bank, to be effective the notice shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes transfer or disposition of the property or debts required to be held hereunder during the effective period of the notice to withhold, he or she shall be liable to the City to the extent of the value of the release up to the amount of the indebtedness owed by the taxpayer to the City."

Section 2. This ordinance shall be submitted to the electorate of the City of Commerce for approval at the November 8, 2005, Special Municipal Election.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The people of the City of Commerce, State of California hereby declare that they would have approved each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid or ineffective.

Section 4. This ordinance requires the majority vote of the electorate voting in its favor in order to become a valid and binding ordinance of the City of Commerce. This ordinance shall be considered adopted upon the date that the vote is declared by the legislative body and shall become effective on January 1, 2006.

ENACTED BY THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA AT THE SPECIAL MUNICIPAL ELECTION HELD ON TUESDAY, NOVEMBER 8, 2005.

Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

ELEC ORDINANCE (HOTEL GUEST TAX).DOC
7/29/04 lko
Rev. 7/11/05 lko
Rev. 7/14/05 lko

RESOLUTION NO. 05-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA,
CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL
ELECTION ON TUESDAY, NOVEMBER 8, 2005, FOR THE SUBMISSION TO THE
QUALIFIED VOTERS A PROPOSED ORDINANCE

WHEREAS, the City Council of the City of Commerce, California, desires to submit to the voters at a Special Municipal Election a proposed Ordinance relating to enacting a hotel visitor tax; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed Ordinance to the voters;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Commerce, California, on Tuesday, November 8, 2005, a Special Municipal Election for the purpose of submitting the following proposed Ordinance:

MEASURE A. SHALL THE ORDINANCE ENTITLED "AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX", FOR THE PURPOSE OF PROTECTING THE LOCAL ECONOMY BY CONTINUING TOURISM PROMOTION, BE APPROVED?	YES	
	NO	

SECTION 2. That the text of the Ordinance submitted to the voters is attached hereto as Exhibit A.

SECTION 3. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 4. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 5. That the polls for the election shall be open at seven o'clock a.m. (7:00 a.m.) of the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 p.m.) of the same day when the polls shall be closed, except as provided in §14401 of the Elections Code of the State of California.

SECTION 6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

MEASURE A

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA, ENACTING A HOTEL VISITOR TAX

THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA DO ORDAIN AS FOLLOWS:

Section 1. The following new Chapter 3.10 is hereby added to the Commerce Municipal Code:

"CHAPTER 3.10

HOTEL VISITOR TAX

3.10.010 Short title. This chapter shall be known as the "Uniform Hotel Visitor Tax Ordinance of the City of Commerce".

3.10.020 Definitions. Except where the context requires, the definitions give in this section govern the construction of this chapter, as follows:

(a) "Guest", "transient" and/or "visitor" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a guest, transient and/or visitor until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a guest, transient and/or visitor, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(b) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by guests, transients and/or visitors for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, bed and breakfast, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, boarding house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

(c) "Occupancy" means the use or possession, or the right to use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

(d) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or other group or combination acting as a unit.

(f) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods,

labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(g) "Tax administrator" means the Finance Director of the City or his or her designee.

3.10.030 Imposition – Amount – Where payable. For the privilege of occupancy in any hotel, each guest, transient and/or visitor is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent charged by the operator or at any lesser rate that the City Council shall determine by resolution. Said tax constitutes a debt owed by the guest, transient and/or visitor to the City which is extinguished only by payment to the operator or to the City. The guest, transient and/or visitor shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the guest, transient and/or visitor's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

3.10.040 Exemptions. No tax shall be imposed upon:

- (a) Any federal officer or employee when on official business;
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.10.050 Guest, transient and/or visitor occupancy registration certificate requirements. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to guests, transients and/or visitors shall register such hotel with the tax administrator and obtain from him or her a guest, transient and/or visitor occupancy registration certificate, which shall be referred to as the Visitor Occupancy Registration Certificate, to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued, and
- (d) The following statement:

"This Visitor Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Hotel Visitor Tax Ordinance of the City of Commerce by registering with the Tax Administrator for the purpose of collecting from guests, transients and/or visitors the hotel guest, transient and/or visitor tax and remitting such tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit. It is unlawful to operate a hotel in the City without a currently valid certificate."

3.10.060 Collection. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every guest, transient and/or visitor. If the operator collects the rent but fails to collect the tax imposed by this chapter, for any reason, the operator shall nevertheless be required to pay such tax to the City. The amount of tax shall be separately stated from the amount of the rent charged, and each guest, transient and/or visitor shall receive a receipt for payment from the

operator. A duplicate of this receipt shall be kept by the operator in accordance with Section 3.10.080. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

3.10.070 Reporting and remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for guest, transient and/or visitor occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted by the operator to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the tax administrator.

3.10.080 Recordkeeping. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the tax administrator shall have the right to inspect at all reasonable times.

3.10.090 Failure of operator to collect and report tax – Determination of tax by tax administrator – Notice and hearing. If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of business address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause, at a time and place fixed in the notice, why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable fifteen (15) days after the date of the tax administrator's written notice unless an appeal is taken as provided in Section 3.10.100.

3.10.100 Appeals. Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of the tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give five (5) days notice in writing thereof to such operator at his or her last known place of business address. The findings of the city council shall be final and conclusive, and shall be served upon the

appellant in the manner previously prescribed for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.10.110 Penalties and interest.

(a) Original delinquency. Any operator who fails to remit any portion of any tax imposed by this chapter, within the time required, shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

(c) Audit deficiency. If, upon audit by the City, an operator is found to be deficient in his or her return or his or her remittance, or both, the tax administrator shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the invoice, an additional penalty shall be imposed at the rate of one percent (1%) per day of the net deficiency, not to exceed ten percent (10%) of the total of the deficiency amount and penalties.

(d) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(e) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent (1½%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(f) Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

3.10.120 Duty of successor or operator. If an operator who is liable for any tax or penalties under this chapter sells or otherwise disposes of his or her hotel, his or her successor shall notify the tax administrator of the date of sale and withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty, for payment to City, until the selling operator produces a receipt from the tax administrator showing that the tax or penalty has been paid or a tax clearance certificate from the tax administrator stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the tax administrator pending settlement of the account of the seller.

3.10.130 Liability of successor for failure to withhold – Notice of amount due. If the successor to the hotel fails to withhold a portion of the purchase price as required, he or she shall also, along with the seller, be liable for the payment of the amount required to be withheld, and any penalty. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate, stating that no tax or penalty is due, the tax administrator shall either issue the certificate or mail notice to the successor at his or her address as it appears on the records of the tax administrator of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

3.10.140 Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City

under this chapter, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within six (6) months of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) An operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a guest, transient and/or visitor; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the guest, transient and/or visitor or credited to the rent subsequently payable by the guest, transient and/or visitor to the operator.

(c) A guest, transient and/or visitor may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the guest, transient and/or visitor directly to the tax administrator, or when the guest, transient and/or visitor, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the guest, transient and/or visitor has been unable to obtain a refund from the operator who collected the tax and that the operator has already paid the amount of the subject tax to the City.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

3.10.150 Action by City to collect tax. Any tax required to be paid by any guest, transient and/or visitor under the provisions of this chapter shall be deemed a debt owed by the guest, transient and/or visitor to the City and payable through the operator. Any such tax collected by an operator which has not been paid to the City shall be deemed tax funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this chapter. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. In such action, such person shall also be liable for the City's attorney fees and costs in such amount as shall be approved by the court.

3.10.160 Violations – Penalties. Any person violating any of the provisions of this chapter shall be guilty of an infraction.

3.10.170 Revocation of certificate. Whenever any operator fails to comply with any provision of this chapter or any rule or regulation of the tax administrator prescribed and adopted under this chapter, the tax administrator upon hearing, after giving the operator ten (10) days notice in writing, specifying the time and place of hearing and requiring him or her to show cause why his or her certificate should not be revoked, may suspend or revoke the certificate held by the operator. The tax administrator shall give the operator written notice of the suspension or revocation of his or her certificate. The notice required in this section may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The tax administrator shall not issue a new certificate after a revocation unless he or she is satisfied that the former holder of the certificate will comply with the provisions of this chapter and regulations of the tax administrator.

3.10.180 Closure of hotel without certificate. During any period of time during which a certificate has not been issued or is suspended, revoked or otherwise not validly in effect, the tax administrator may require that the hotel be closed.

3.10.190 Recording notice of lien. If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the tax administrator may, within three (3) years after the amount is due, file for record in the office of the county recorder a notice of lien specifying the amount of the tax, interest and penalties due, the name and address as it appears on the records of the tax administrator of the operator

liable for the same and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be remitted and paid. From the time of the filing for record, the amount required to be remitted, together with interest and penalties, constitutes a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by him or her. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the notice of lien unless sooner released or otherwise discharged.

3.10.200 Priority and lien of tax.

(a) The amounts required to be paid by any operator under this chapter with interest and penalties shall be satisfied first in any of the following cases:

- (1) Whenever the person is insolvent;
- (2) Whenever the person makes a voluntary assignment of his or her assets;
- (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
- (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process law. This chapter does not give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

(b) The preference given to the City by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 through 1208.5 of the Code of Civil Procedure.

3.10.210 Warrant for collection of tax. At any time within three (3) years after any operator is delinquent in the remittance or payment of any amount herein required to be remitted or paid or within three (3) years after the last recording of a notice of lien under Section 3.10.190, the tax administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner with the same effect as a levy of and a sale pursuant to a writ of execution. The tax administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper.

3.10.220 Seizure and sale. At any time within three (3) years after any operator is delinquent in the remittance or payment of any amount, the tax administrator may forthwith collect the amount in the following manner: The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due, together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect hotel guest, transient and/or visitor taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

3.10.230 Withhold notice. If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or her, or in the event a determination has been made against him or her for the remittance of tax and payment of the penalty, the City may, within three (3) years after the tax obligation became due, give notice thereof personally or by registered mail to all persons, including the state or any political subdivision thereof, having in their possession or under their control any credits or any personal property belonging to the taxpayer. After receiving the withholding notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the City consents to a transfer or disposition or until sixty (60) days elapse after the receipt of the notice, whichever expires earlier. All persons, upon receipt of said notice, shall advise the City immediately of all such credits, other

personal property or debts in their possession, under their control or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of the bank, to be effective the notice shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes transfer or disposition of the property or debts required to be held hereunder during the effective period of the notice to withhold, he or she shall be liable to the City to the extent of the value of the release up to the amount of the indebtedness owed by the taxpayer to the City."

Section 2. This ordinance shall be submitted to the electorate of the City of Commerce for approval at the November 8, 2005, Special Municipal Election.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The people of the City of Commerce, State of California hereby declare that they would have approved each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid or ineffective.

Section 4. This ordinance requires the majority vote of the electorate voting in its favor in order to become a valid and binding ordinance of the City of Commerce. This ordinance shall be considered adopted upon the date that the vote is declared by the legislative body and shall become effective on January 1, 2006.

ENACTED BY THE PEOPLE OF THE CITY OF COMMERCE, STATE OF CALIFORNIA AT THE SPECIAL MUNICIPAL ELECTION HELD ON TUESDAY, NOVEMBER 8, 2005.

Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk

ELEC ORDINANCE (HOTEL GUEST TAX).DOC
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